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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1961

No. 872

ST. MARY PARISH SCHOOL BOARD,
Petitioner,

versus

TERREBONNE PARISH SCHOOL BOARD,
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF LOUISIANA.

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TERREBONNE PARISH SCHOOL BOARD,
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PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF LOUISIANA.

St. Mary Parish School Board, a body politic and corporate under the law of Louisiana, governing body of the public school system of the Parish of St. Mary, State of Louisiana, prays that a writ of certiorari issue to review the judgment of the Supreme Court of Louisiana, entered in the above case on December 29, 1961, rehearing denied February 2, 1962.

OPINIONS BELOW.

The opinion of the Supreme Court of Louisiana is reported in 138 So. (2d) 104. The opinion of the Court

of Appeal, First Circuit (the intermediate Court of Appeal), is reported in 131 So. (2d) 266. The opinion of the District Court of the Parish of St. Mary is unreported, but neither it nor the opinion of the Court of Appeal has revelance to the questions presented herein.

JURISDICTION.

The judgment of the Supreme Court of Louisiana was made and entered on December 29, 1961. (R. p. 12. Appendix 1.) Application for rehearing was timely filed and thereafter denied by the Supreme Court of Louisiana, without opinion, on February 2, 1962. (R. p. 4.) The jurisdiction of this Court is invoked under 28 U. S. C. 1257 (3). See *Crescent City L. S. L. & S. H. Co., Butchers' & D. Benev. Assn., v. Butchers' Benev. Assn. v. Butchers' Union S. H. & L. S. L. Co.*, 120 U. S. 141, 30 L. Ed. 614, 7 S. Ct. 472 (1887); *Central Natl. Bank v. Stevens*, 169 U. S. 432, 42 L. Ed. 807, 18 S. Ct. 403, (1898); *Stoll, Farley (C. J.) & Co. v. Gottlieb*, 305 U. S. 165, 83 L. Ed. 104, 59 S. Ct. 134 (1938).

This is a companion case to *Ouachita School Board v. State of Louisiana, Through the Department of Highways*, opinion reported in 138 So. (2d) 109, and in which case petition for writ of certiorari to the Supreme Court of Louisiana has heretofore been filed in this Court, bearing Docket No. 845 filed April 6, 1962.

QUESTION PRESENTED.

The decision of the Supreme Court of Louisiana in this case is pitched squarely upon Act 25 of the First Extraordinary Session of the Louisiana Legislature of

1960, which act this Court had previously declared wholly and completely unconstitutional and void in the case of *Bush v. Orleans Parish School Board*, 188 F. Supp. 916, affirmed without opinion, 366 U. S. 212, 81 S. Ct. 1091, 6 L. Ed. (2d) 239, and the only question presented is whether this Court shall countenance such utter disregard of its decree.

CONSTITUTIONAL AND STATUTORY PROVISIONS.

Article VI, Clause 2, of the United States Constitution:

> "This Constitution, and the laws of the United States which shall be made in pursuance thereof; and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every State shall be bound thereby, anything in the Constitution or laws of any State to the contrary notwithstanding."

No other constitutional or statutory provisions are actually involved in this case. However, for reference purposes, Act 25 of the First Extraordinary Session of the Louisiana Legislature of 1960, which has been declared unconstitutional in its entirety by this Court as noted hereinabove, and Article 19, Section 26, of the Louisiana Constitution, are set forth as Appendices 2 and 3, respectively.

STATEMENT OF THE CASE.

Under the Louisiana Constitution (see Appendix 3), parish school boards are immune from suit without

consent of the Legislature. This sovereign immunity was immediately raised by St. Mary Parish School Board, by proper pleading in the court of first instance, in bar of this suit by Terrebonne Parish School Board claiming the right to share in certain revenues under an oil and gas lease granted by St. Mary to Texaco, Inc.

The Supreme Court of Louisiana explicitly recognized the sovereign immunity of St. Mary Parish School Board, stating in its opinion that ". . . Article 19, Section 26 could not be more clear and explicit in its command that the Legislature must first be applied to and permission be granted before a suit may be entertained against a parish school board." (R. p. 14; 138 So. (2d) 104, 105.)

The Court found, however, that legislative permission to sue all parish school boards had been granted by Act 25 of the First Extraordinary Session of the Louisiana Legislature of 1960, which provided, *inter alia*, that parish school boards were bodies corporate with the power "to sue and be sued." (See Appendix 2.)

This Act 25 of the First Extraordinary Session of 1960, to the express knowledge and awareness of the Louisiana Supreme Court, had previously been held unconstitutional by this Court in *Bush v. Orleans Parish School Board, supra.* As stated by the Louisiana Supreme Court, "Act 25 is one of the statutes specifically named in the decree in the *Bush* case, above referred to, as being unconstitutional." (R. p. 16; 138 So. (2d) 104; 107.)

This unconstitutional and defunct Act 25 of the First Extraordinary Session of 1960, until relied upon

by the Supreme Court of Louisiana, had not been urged, discussed, or even mentioned by any of the inferior courts or by any counsel for either side in this case or the companion case of *Ouachita Parish School Board v. the State of Louisiana, Through the Department of Highways*. The federal question, *i. e.*, whether the Louisiana Supreme Court can ignore the decree of this Court declaring a Louisiana statute unconstitutional, was therefore raised for the first time by the Louisiana Supreme Court itself. St. Mary Parish School Board, in its application for rehearing, urged the Court to conform to the supreme authority of the Constitution and the decrees of this Court nullifying the Louisiana statute. A rehearing was denied by the Louisiana Supreme Court on February 26, 1962, thus passing upon the constitutional question again, and rejecting petitioner's contentions. Petitioner has therefore never had the opportunity to argue the question herein presented in open court.

The only part of the record necessary to a decision on this application is the opinion of the Louisiana Supreme Court. That Court sustained petitioner's claim of sovereign immunity under Louisiana law, which had been the bone of contention in the lower courts, and judgment in favor of petitioner should have been rendered forthwith at that point. However, *sua sponte*, the Louisiana Supreme Court chose to interject this serious federal question by applying against petitioner the previously nullified Act 25.

REASONS FOR GRANTING THE WRIT.

We respectfully submit that the question posed by this application readily answers itself, and that the need

for action by the Court is too clear to require extensive discussion. A clear, unequivocal, comprehensive decree of a three-judge Federal Court, enjoining the enforcement of an unconstitutional Louisiana statute has been deliberately disregarded by the Louisiana Supreme Court in this case. To allow to pass unnoticed this direct challenge to the Supremacy Clause of the United States Constitution presented here by the Louisiana Supreme Court would invite unending evasions of decrees of this Court deemed undesirable by inferior courts.

The Louisiana Supreme Court has sought justification for its action on the ground that it was merely "construing" the decree in the *Bush* case, *supra*, as applicable only to Section 2 of Act 25 of the First Extraordinary Session of 1960. The transparency of this position is manifest upon the merest reading of the *Bush* decision, where the three-judge Court stated:

> "The proponents of the 'package' were themselves insistent on so labeling it and expressly argued that the passage of every measure proposed was essential to the success of the plan. In view of this, the court might properly void the entire bundle of new laws without detailed examination of its content. . . . But we shall nevertheless give brief consideration to each of the measures enacted. . . .
>
> "For the foregoing reasons, this court denies the interposition claim of the State of Louisiana, and declares Acts 2, 10, 11, 12, 13, 14, 16, 17, 18, 19, 20, 21, 22, 23, 24, **25**, 26 and 27 and House Concurrent Resolutions 10, 17, 18, 19 and 23 of the First Extra Session of 1960 unconstitutional. This

court will prepare the decree enjoining their enforcement."

This clear, explicit holding totally precludes any search for "intention" or delving into reasons behind reasons, as undertaken by the Louisiana Supreme Court. See *Deposit Bank v. Frankfort*, 191 U. S. 499, 48 L. Ed. 276, 25 S. Ct. 154 (1903); *Kansas City, K. C. & C. R. Co. v. Wabash R. Co.*, 217 U. S. 247, 54 L. Ed. 752, 30 S. Ct. 510 (1910).

We further point out that there can be no question of severability in this case, because the Court in the *Bush* case unequivocally held the entire statute unconstitutional, thus foreclosing all further inquiry. See *Quinn v. United States*, 238 U. S. 347, 59 L. Ed. 1340, 35 S. Ct. 926 (1915).

The action of the Louisiana Supreme Court is all the more surprising because of its full recognition of the Supremacy Clause and the authority of this Court just thirty days earlier in the unreported case of *Lelong v. Sutherland* (Appendix 4), where the Court stated:

> "The fact remains that the specific statute involved here has been stricken with nullity and rendered permanently ineffective by the highest court of the land. It, in other words, is now nonexistent, whether made so rightly or wrongly; and no judicial action can recreate it."

Unfathomable as the motives of the Louisiana Supreme Court may be in accepting this Court's decree in the *Lelong* case and rejecting its decree in this case, such

rejection cannot be tolerated if the judicial relations between federal and state courts established by the Constitution are to continue as envisioned.

The authority of this Court under the Supremacy Clause of the Constitution is so firmly imbedded in our federal system of government that citations should be wholly unnecessary. The classic statement is set forth in the early case of *Cook v. Moffat*, 5 How. 159, 12 L. Ed. 293 (1847):

> "The Constitution of the United States is the supreme law of the land, and binds every forum, whether it derives its authority from a state or from the United States. When this Court has declared state legislation to be in conflict with the Constitution of the United States, and therefore void, the state tribunals are bound to conform to such decision. . . ."

In the *Bush* case itself, the District Court reiterated the familiar principles which should have been accepted by the Louisiana Supreme Court here:

> "And so, from the beginning, it was decided that the Supreme Court of the United States must be the final arbiter on questions of constitutionality. . . . But more important to our discussion is the constitutional role of the Court with regard to State acts. The original Judiciary Act of 1789 confirmed the authority of the Supreme Court to review the judgment of all state tribunals on constitutional questions. . . . Likewise from the first one of its functions was to pass on the constitu-

> tionality of state laws. . . . The fact is that the Constitution itself established the Supreme Court of the United States as the final tribunal for constitutional adjudication. By definition, there can be no appeal from its decision."

See also *Cooper v. Aaron*, 358 U. S. 1, 3 L. Ed. (2d) 5, 78 S. Ct. 1401 (1958).

Act 25 of the First Extraordinary Session of 1960 was enacted November 8, 1960, and was declared unconstitutional on November 30, 1960—a life span of twenty-four days. It made only a footnote in *West's Louisiana Statutes Annotated*, La. R. S. 17:51, 121. If the Louisiana Supreme Court is successful in its attempt to breathe life into this void statute, and the precedent accepted, all force will be gone from the edicts of this Court, and its sternest commands will be reduced to judicial whispers. Avoidance of any order, stated in the plainest of language, will require nothing more than an exercise in sophistry. A denial of a writ of certiorari in this case will suggest condonation of a clear evasion of this Court's constitutional authority and will likely invite even bolder incursions in the future. These serious implications of the decision below, if unreversed, render this case, we respectfully submit, a particularly appropriate one for the exercise of this Court's powers of review under the Constitution.

CONCLUSION.

For the reasons set forth above, petitioner prays that a writ of certiorari be granted, and that, upon due

proceedings had, the judgment of the Supreme Court of Louisiana be reversed, and respondent's suit dismissed.

Respectfully submitted.

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Post Office Box 592,
Franklin, Louisiana,
Counsel for Petitioner, St. Mary Parish School Board.

CERTIFICATE OF SERVICE.

I hereby certify that the respondent, Terrebonne Parish School Board, has been properly served, in conformity with Rule 33 of the United States Supreme Court, with a copy of the foregoing petition for writ of certiorari, by depositing same in a United States post office, correctly addressed to respondent's counsel of record at his post-office address, with first-class postage prepaid; and that I execute this certificate as a member of the bar of the United States Supreme Court.

Franklin, Louisiana, this April 27, 1962.

JACK C. CALDWELL

APPENDIX 1

Friday, Dec. 29, 1961

SUPREME COURT OF LOUISIANA

No. 45,797

TERREBONNE PARISH SCHOOL BOARD

versus

ST. MARY PARISH SCHOOL BOARD
and TEXACO, INC.

IN RE ST. MARY PARISH SCHOOL BOARD APPLYING FOR CERTIORARI, OR WRIT OF REVIEW, TO THE COURT OF APPEAL, FIRST CIRCUIT, PARISH OF ST. MARY.

McCALEB, Justice.

This action was brought by the Terrebonne Parish School Board against the St. Mary Parish School Board and Texaco, Inc., to recover proceeds from a mineral lease entered into by the two defendants and, in the alternative, to have the lease cancelled. The lease covered a Sixteenth Section of land located in St. Mary Parish, which was set aside for public school purposes by the federal land grants of 1806 and 1811. The plaintiff's

claim to a portion of the revenue therefrom is based upon Article 12, Section 18 of the Louisiana Constitution, as amended by Act 743 of 1954, wherein it is provided:

> "* * * The parish school boards of parishes within which there lies a township or any portion of a township containing a Sixteenth Section or any portion of a Sixteenth Section shall be entitled to a portion of the proceeds derived from the sale of said Sixteenth Section or any portion thereof, including the sale of timber thereon and revenues arising from mineral leases, contracts, royalties and all other revenues arising from said sales, leases and contracts heretofore made or which may hereafter be consummated and said proceeds and revenues shall be credited to the parish school boards in which such townships are situated in proportion to the percentage of the townships lying in each parish * * *."

The plaintiff alleged in its petition that a portion of the township in which the leased Sixteenth Section is situated lies within Terrebonne Parish.

The defendant, St. Mary Parish School Board, filed exceptions to the jurisdiction *ratione materiae* and *ratione personae*. The exceptions were based on an amendment added as a new section to Article 19 of the Constitution in 1956 which withdraws the consent of the State to suits against certain of its agencies and subdivisions. This amendment, which is Article 19, Section 26 of the Constitution, reads in part:

"The following named commissions, boards, bodies or municipal corporations are and shall be considered special agencies of the State of Louisiana:

" * * * (7) The parish school boards of each of the parishes of the State of Louisiana. * * *

"The consent of the State of Louisiana to suits or legal proceedings against any of the above listed special agencies, (however heretofore given) is hereby expressly withdrawn and no such suit or proceeding shall be permitted except as provided in this section. * * * There is expressly excepted from the foregoing, suits for the enforcement of contracts entered into by any of the special agencies or for the recovery of damages for the breach thereof. Additionally, the Legislature of Louisiana may, in individual cases, by appropriate act grant to any party showing just and reasonable cause the right to sue any of these special agencies, in compliance with Section 35, of Article III of this Constitution. * * *"

It was St. Mary's contention that it was not amenable to suit under this Section unless permission to sue be first obtained from the Legislature. The exceptions were overruled by the district judge and St. Mary applied to the Court of Appeal, First Circuit, for supervisory writs. The writs were granted and the Court of Appeal found that the district court was correct in overruling the exceptions and the cause was remanded. The Court of Appeal deduced that Section 26 of Article 19 does not envision that the sovereign state itself was to be precluded from instituting suit against one of its agencies;

that, in bringing this suit to enforce its constitutional right to a portion of the revenue derived from Sixteenth Section school lands situated in a township within its territorial borders, the plaintiff occupied the position of the sovereign and that, in the absence of an express provision to that effect, Article 19, Section 26 should not be construed as prohibiting suits between state agencies. See *Terrebonne Parish Sch. Bd. v. St. Mary Parish Sch. Bd.*, 131 So. (2d) 266. From this decision, writs were applied for and were granted by this Court.

We cannot subscribe to the views of the Court of Appeal because Article 19, Section 26 could not be more clear and explicit in its command that the Legislature must first be applied to and permission be granted before a suit may be entertained against a parish school board. However, we think the exceptions were properly overruled for an entirely different reason, as will be hereinafter shown.

In considering whether the parish school boards are presently immune from suit, a short review of the pertinent legislation on the subject may be helpful. In the statute (Act 100 of 1922, § 17, Par. I, now R. S. 17:51) providing for the establishment of parish school boards, pursuant to the mandate of Section 10 of Article 12 of the Constitution, these boards are made subject to suits. The statute declared that:

> "There shall be a parish school board for each of the parishes, and these several parish school boards are constituted bodies corporate with the power to sue and be sued under the name and style (Name of Parish) Parish School Board * * *."

Until 1956, there was this general waiver of sovereign immunity with respect to parish school boards. The adoption of Article 19, Section 26 in 1956 had the effect of deleting from R. S. 17:51 the phrase "and be sued." Unfortunately, the parties litigant and the courts below apparently assumed that the law rested at this point and failed to examine constitutional amendments and legislative enactments subsequent to Section 26 of Article 19 in an effort to ascertain whether its provisions, insofar as they pertain to parish school boards, are still effective. As a consequence, we have not had the benefit of argument or briefs concerning posterior laws that very definitely affect the question now before us.

In analyzing the provisions of Section 26 of Article 19 of the Constitution, we particularly note that the withdrawal of the State's consent to sue any of the special agencies enumerated therein, is subject to two exceptions, (1) in cases seeking enforcement of contracts made by any of the special agencies or for the recovery of damages for the breach thereof, and (2) "in individual cases" whenever the Legislature has granted the right to sue, "in compliance with Section 35 of Article III of this Constitution."

Section 35 of Article 3 of the Constitution, as amended by Act 385 of 1946, provided merely for special legislative authorizations for a suit or suits against the State and its subdivisions in individual cases and did not comprehend a general legislative waiver of immunity which had previously existed under R. S. 17:51 as to parish school boards. However, the Legislature proposed at its regular session of 1960, by Act No. 621 thereof, a com-

plete revision of the provisions of Section 35 of Article 3 of the Constitution[1] which, *inter alia*, would vest the Legislature with more extensive powers respecting the right and authority to waive governmental immunity. This constitutional amendment was adopted by the people on November 8, 1960 and became effective on December 18, 1960. It provides, so far as pertinent here, that the Legislature is empowered to waive "* * * by special or general laws or resolutions, the immunity from suit and from liability of the state, and of parishes, * * * public boards, * * * and other public or governmental bodies; * * *."

Thus, it is seen that this constitutional amendment effectively extended the legislative power of waiver of immunity from suit against the special agencies (school boards) enumerated in Section 26 of Article 19, which was restricted therein to individual cases, so that thereafter the Legislature was empowered to waive immunity by special or general laws or resolutions. Conformably with the authority vested in it by the 1960 amendment to Section 35 of Article 3, the Legislature, by Section 1 of Act 25 of the First Extraordinary Session of 1960, amended and reenacted R. S. 17:51 providing for the establishment of a parish school board for each of the parishes, constituting the boards as bodies corporate with the

[1] This proposed constitutional amendment was occasioned by our 1959 decisions in **Duree v. Maryland Cas. Co.**, 238 La. 166, 144 So. (2d) 594 and **Stephens v. Natchitoches Parish School Board**, 238 La. 388, 115 So. (2d) 793, holding that, under the clear language of Section 35 of Act 3, the Legislature could waive only immunity of the State and its agencies from suit but not their immunity from liability.

power "* * * to sue and be sued under the name and style 'Name of Parish Parish School Board.' * * *" Hence, by virtue of this statute, parish school boards have been restored to their original legal status of corporate entities subject to suit which had prevailed since their establishment, save for the short period of time during which Section 26 of Article 19 affected them.

In applying the legislation enacted subsequent to Section 26 of Article 19 and holding that it renders that constitutional amendment ineffective as to parish school boards, we have not overlooked the possibility that counsel for the defendant school board might have been able to present argument in opposition, had plaintiff's counsel cited and relied upon this subsequent legislation in the lower courts and here. In our study of the matter, we have conceived that there are probably two objections which might be advanced with respect to the effectiveness of the 1960 reenaction of R. S. 17:51 to the matter at hand. Therefore, anticipating that these objections will be made in an application for a rehearing (together with any other legal arguments of which we are not aware at this time) we consider it appropriate, under the circumstances of the case, to express views respecting them at this time.

First, we take cognizance of the fact that the major portion of the acts and resolutions passed by the Legislature in the First Extraordinary Session of 1960 have been declared void as contravening the Federal Constitu-

tion by a three judge United States District Court. *Bush v. Orleans Parish School Board*, 188 F. Supp. 916.[2]

Act 25 is one of the statutes specifically named in the decree in the *Bush* case, above referred to, as being unconstitutional. However, this Act is described in the body of the Court's opinion as being one of the statutes passed in the First Extraordinary Session of 1960 which purported to abolish the Orleans Parish School Board; that, although these local measures are admittedly in the area peculiarly reserved by the Federal Constitution for exclusive State action, they were part and parcel of the "segregation package" introduced at the Special Session of 1960 which had for its purpose the preservation of segregation in the schools, contrary to the U. S. Supreme Court decision in *Brown v. Board of Education*, 347 U. S. 483, 74 S. Ct. 686, 98 L. Ed. 873 (1954) and that, therefore they are all unconstitutional.[3]

And, in Appendix "B" (attached to and made part of the opinion in the *Bush* case), which summarizes the laws and resolutions enacted by the First Extraordinary Session of 1960 stricken as unconstitutional by the Court, Act 25 is stated to be an Act repealing R. S. 17:121, relating to the election and qualification of the members of the Orleans Parish School Board.

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[2] This decision was affirmed without opinion on May 8, 1961 by the Supreme Court of the United States. See **New Orleans, appellant, v. Earl Benjamin Bush, et al.**, 6 L. Ed. (2d) 239.

[3] The pronouncement that a statute, clear and unambiguous in its terms, is to be stricken with invalidity solely on the basis of motive is contrary, in our opinion, to all previous jurisprudence throughout the land, both state and Federal. For an excellent discussion of the prior jurisprudence see concurring opinion of Janvier, J. in **Lelong v. Sutherland, et al.** (Ct. App.) ..... So. (2d) ....., decided on November 7, 1961.

Thus it is manifest that the Federal Court was interested only in preserving the law establishing the Orleans Parish School Board, and providing for the election of its members for stated terms, and it struck as unconstitutional the repeal of that law (R. S. 17:121) by Section 2 of Act 25 of the First Extraordinary Session of 1960. Its decree, when viewed in the light of the statements in the opinion and the appendix, can be construed as going no further.[4] Assuredly, it cannot be seriously contended that R. S. 17:51, as reenacted[*] by Section 1 of Act 25 of 1960, is violative of the Federal Constitution or that its provisions are calculated to deprive Negro children of their constitutional rights.

Secondly, it might be argued that, since the amendment to Article 3, Section 35 had not officially become part of the Constitution at the time Act 25 was enacted, the Legislature acted without constitutional authority in waiving the parish school boards' immunity to suit. As aforesaid, the amendment to Article 3, Section 35 was proposed to the voters by Act 621 of the Regular Session of 1960 which was a Joint Resolution of the Legislature. The election of November 8, 1960 was set as the date the amendment was to be voted on. The amendment was approved by the electorate on that date and the Governor

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[4] Our action in looking beyond the decree into the body of the opinion to determine the precise effects of the judgment is consistent with the jurisprudence of this Court. *See* **California Company v. Price**, 234 La. 338, 99 So. (2d) 743 (1957). By construing the decree in the **Bush** case in keeping with the views expressed in the body of the opinion, a result is reached consonant with the Court's intent. To do otherwise would produce an absurd consequence.

[*] Note by Counsel: R.S. 17:51 was not reenacted by Act 25; it was **amended**, and reenacted; and, as amended and reenacted, was held unconstitutional.

proclaimed the results of the election on November 28th. Under Article 24, Section 1 of the Constitution, the amendment did not become part of the Constitution until twenty days had elapsed from the time of the Governor's proclamation. December 18, 1960 was, therefore, the effective date of the amendment, whereas, Act 25 of the First Extraordinary Session, which was designated as emergency legislation, was signed by the Governor on the evening of November 8th and, purportedly, became effective immediately. At this time, all contingencies were removed from the amendment process and all that remained, before the amendment became part of the Constitution, was for the Governor to make his proclamation and for the requisite amount of time to elapse.

This situation, in which the legislative act predates the formal effectiveness of the constitutional authority for such act, was present in *Etchinson Drilling Co. v. Flournoy*, 131 La. 412, 59 So. 867. There, it was held that an Act, which was passed at the same time that a constitutional amendment was proposed and made conditional upon the adoption of the amendment, had no validity notwithstanding that the amendment was subsequently adopted.

However, at the time this case was decided (1912), there was no provision of our Constitution which permitted the passage of a law conditioned for its effectiveness upon the adoption of a proposed constitutional amendment. But this was remedied by the Constitution of 1921, as it provided by Section 2 of Article 21 that:

> "Whenever the Legislature shall submit amendments to this Constitution, it may, at the same

session, pass laws to carry them into effect, to become operative when the proposed amendments have been ratified."

Accordingly, it is plain that the ruling in *Etchinson Drilling Co. v. Flournoy* no longer obtains. Under the 1921 Constitution it has been consistently held that statutes made contingent upon ratification of proposed amendments to the Constitution are valid. *Peck v. City of New Orleans*, 199 La. 76, So. (2d) 508; *Peck v. Tugwell*, 199 La. 125, 5 So. (2d) 524.

Act 25 of 1960 was not passed at the same session as that which the constitutional amendment, on which it depends for its validity, was passed. But, since it was enacted at a later legislative session, we cannot discern that this circumstance makes any material difference. The language of the Constitution authorizing the passage of laws dependent for their validity on constitutional amendments proposed at the same session is permissive. Hence, we know of no reason why legislation may not be enacted at a subsequent session when a constitutional amendment upon which it is dependent for its validity has been proposed at a prior session of the Legislature.

Nor do we find that Section 2 of Article 24 of the Constitution requires, or that it is essential to the ultimate validity of the statute, that it be stated in the Act that its effectiveness is dependent on the ratification of the proposed constitutional amendment. *See G. B. & C. N.-G. R. W. Co. v. Gross*, 47 Texas 428 (1877). It suffices, we think, that the Act be passed at the same legislative session or at a session subsequent to that at which the

constitutional amendment was proposed. When this is done, it will presumed, as found by the Supreme Court of Texas in the case above cited, that the Act was passed in anticipation of the adoption of the proposed constitutional amendment.

Actually, in the case at bar, it appears that, at the time Act 25 was signed into law (7:15 p. m. on November 8, 1960) the electorate had already adopted the amendment to Section 35 of Article 3 of the Constitution and only the formality of proclamation and the lapse of time stood in the way of its effectiveness. This situation closely parallels that presented in *Druggan v. Anderson*, 269 U. S. 36, 46 S. Ct. 14, 70 L. Ed. 151, wherein the validity of the National Prohibition Act was challenged on the ground that it was enacted prior to the effective date of the 18th Amendment, although after the ratification of the amendment by the requisite number of states. The Act was, of course, upheld in an opinion by Mr. Justice Holmes.

Being of the view that the Legislature has waived the immunity of parish school boards from suit in the exercise of constitutional authority to do so, the judgment of the Court of Appeal is affirmed.

APPENDIX 2

LOUISIANA ACT NO. 25 OF THE FIRST EXTRAORDINARY SESSION OF 1960

(The text of this Act is taken from the official publication of the acts of the Legislature by the Secretary of State. It will not be found in Title 17, Louisiana Revised Statutes because it was held unconstitutional by the United States Supreme Court.)

"Be it enacted by the Legislature of Louisiana:

"Section 1. That Section 51 of Title 17 of the 1950 Louisiana Revised Statutes, relative to Parish School Boards, be amended and re-enacted so as to read as follows:

"Section 51. Parish boards as bodies corporate; officers upon whom service may be made.

"There shall be a parish school board for each of the parishes, and the Legislature shall make provision for the creation and election of a School Board for the Parish of Orleans, and these several parish school boards are constituted bodies corporate with the power to sue and be sued under the name and style (Name of Parish) Parish School Board. Citation shall be served on the president of the board and in his absence on the vice-president.

"Section 2. That Section 121 of Title 17 of the 1950 Louisiana Revised Statutes relative to the nomination and election of members of the Orleans Parish School Board, qualifications, compensation, and vacancies, be and the same is hereby repealed in its entirety.

"Section 3. The necessity for the immediate passage of this Act having been certified by the Governor to the Legislature while in session, in accordance with Section 27 of Article III of the Constitution of Louisiana, this Act shall become effective immediately upon approval by the Governor.

"Approved by the Governor: November 8, 1960, at 7:15 P.M."

APPENDIX 3

PERTINENT PORTION OF ARTICLE 19, SECTION 26 OF THE CONSTITUTION OF LOUISIANA; AS ADDED BY LOUISIANA ACT NO. 613 OF 1956; ADOPTED NOVEMBER 6, 1956.

"The following named commissions, boards, bodies or municipal corporations are and shall be considered special agencies of the State of Louisiana:

"* * * (7) The parish school boards of each of the parishes of the State of Louisiana. * * *

"The consent of the State of Louisiana to suits or legal proceedings against any of the above listed special agencies, (however heretofore given), is hereby expressly withdrawn and no such suit or proceeding shall be permitted except as provided in this section. * * * There is expressly excepted from the foregoing, suits for the enforcement of contracts entered into by any of the special agencies or for the recovery of damages for the breach thereof. Additionally, the Legislature of Louisiana may, in individual cases, by appropriate act grant to any party showing just and reasonable cause the right to sue any of these special agencies, in compliance with Section 35, of Article III of this Constitution.

"This Section shall be self-operative and shall supersede any other portion of this Constitution or any statutes or regulations in conflict herewith."

APPENDIX 4

November 29, 1961

SUPREME COURT OF LOUISIANA
New Orleans

No. 45,906

FRANCIS R. LeLONG

versus

MATTHEW R. SUTHERLAND ET AL

ON CONSIDERATION OF APPLICATION FOR WRIT OF REVIEW TO THE COURT OF APPEAL, FOURTH CIRCUIT, STATE OF LOUISIANA

PER CURIAM:

Pretermitting the question of the right of this plaintiff to institute and prosecute the instant action, it appears that we are powerless to grant any portion of the relief demanded by him herein inasmuch as the Louisiana statute on which the entire demand is based (Act No. 4 of the Third Extra Session of 1960) has been declared unconstitutional by the United States Supreme-

Court on the sole ground that assertedly the Legislature was prompted by a discriminatory motive in enacting it. See *Bush et al. v. Orleans Parish School Board et al.* (U. S. Dist. Ct., E. D. of La.), 188 Fed. Sup. 916 and 191 Fed. Sup. 871, which decisions were approved and affirmed by the U. S. Supreme Court in causes Nos. 589, 868 and 967 on the docket of such court.

While we entertain serious doubt as to the soundness of that ruling, particularly in view of the uniform jurisprudence of the federal courts (established over a period of many years prior to the consideration of the *Bush* case) to the effect that such tribunals may not and do not inquire into the motives or wisdom of a legislative body acting within its proper power, **the fact remains that the specific statute involved here has been stricken with nullity and rendered permanently ineffective by the highest court of the land. It, in other words, is now non-existent, whether made so rightly or wrongly; and no judicial action can recreate it.**

The writ is refused.